

Practitioner's Docket No. D-497

PATENT

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



In re application of: Michael James O'Brien

Application No.: 10 / 675,052 Group No.: 2855
Filed: 09/30/2003 Examiner: Ellington, Alandra
For: Ceramic Ball Bearing Fracture Test Method

Batch No:

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION TO REVIVE PATENT APPLICATION—FAILURE TO PAY ISSUE
FEE UNINTENTIONAL (37 C.F.R. §§ 1.137(b) AND 1.316)

1. Applicant petitions for revival of this application.

CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10*

(When using Express Mail, the Express Mail label number is **mandatory**;
Express Mail certification is optional.)

I hereby certify that, on the date shown below, this correspondence is being:

MAILING

- ☒ deposited with the United States Postal Service in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

37 C.F.R. § 1.8(a)

37 C.F.R. § 1.10 *

- ☒ with sufficient postage as first class mail.

☐ as "Express Mail Post Office to Addressee"

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TRANSMISSION

- ☐ facsimile transmitted to the Patent and Trademark Office, (703) _____

Carole Ann Mulchinski

Signature

Date: 9/15/05

Carole Ann Mulchinski

(type or print name of person certifying)

* Only the date of filing (§ 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under § 1.8 continues to be taken into account in determining timeliness. See § 1.703(f). Consider "Express Mail Post Office to Addressee" (§ 1.10) or facsimile transmission (§ 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

(Petition to Revive Patent Application—Failure to Pay Issue Fee Unintentional [11-5]—page 1 of 4)

09/21/2005 YPOLITE1.00000054 010428 10675052

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2. Nature of the Abandonment

- ☐ in the communication from the PTO mailed _____, it was noted that this application is abandoned for:
- ☐ failure to pay the issue fee within the 3 month period from the date of the notice of allowance required by 37 C.F.R. § 1.316.
- ☐ failure to pay the balance of the issue fee within 3 months from the date of notification of the deficiency as required by 37 C.F.R. § 1.317.
- ☒ the undersigned has reviewed his/her records and noted that the issue fee for this application was not timely paid.

3. Date of Filing of This Petition After Abandonment

(check all item which apply)

This petition is being filed:

- ☒ within 3 months after the applicant was first notified of abandonment
- ☐ within 1 year of the date of abandonment

NOTE: Under very limited conditions, a petition to revive for unintentional failure to pay the issue fee may exceed the one year limit when abandonment is due to action or inaction by the applicant and the PTO performs a positive documented Official act which could lead a reasonable individual to conclude that the action or inaction was appropriate. Notice of Aug. 26, 1985 (1059 O.G. 4).

4. The delay in payment of the issue fee was unintentional. The entire delay from the due date in paying the required issue fees until the filing of this petition was unintentional. 37 C.F.R. § 1.137(b)(3).

5. Payment

☒ A. Issue Fee Paid on 9/8/05.

NOTE: "The Notice of Allowance requires the timely payment of the issue fee in effect on the date of its mailing to avoid abandonment of the application. In instances in which there is an increase in the issue fee by the time of payment of the issue fee required in the Notice of Allowance, the Office will mail a notice requiring payment of the balance of the issue fee then in effect. See *In re Mills*, 12 USPQ2d 1847, 1848 (Comm'r Pat. 1989). The phrase 'for failure to pay the issue fee or any portion thereof' applies to those instances in which the applicant fails to pay either the issue fee required in the Notice of Allowance or the balance of the issue fee required in a subsequent notice. In such instances, the reply must be the issue fee then in effect, if no portion of the issue fee was previously submitted, or any outstanding balance of the issue fee then in effect, if a portion of the issue fee was previously submitted.

"In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee. Even if an application abandoned for failure to pay the publication fee is being revived solely for purposes of continuity with a continuing application, the petition to revive under 37 CFR 1.137 must include payment of the publication fee." MPEP, § 711.03(c), Rev. 2.

NOTE: The petition must contain or refer to payment of the issue fee then in effect, if no portion of the issue fee was previously submitted, or any outstanding balance of the issue fee then in effect, if a portion of the issue fee was previously submitted. M.P.E.P., § 711.03(c), 7th Edition.

- ☒ has been paid on 9/8/05
- ☐ is paid herewith

(Utility patent, 37 C.F.R. § 1.18(a), \$1,400.00—small entity \$700.00;
Design patent, 37 C.F.R. § 1.18(b), \$800.00—small entity \$400.00;
Plant patent, 37 C.F.R. § 1.18(c), \$1,100.00—small entity \$550.00)

Fee \$ _____

☒ Publication Fee (§ 1.18(d))

☒ has been paid

☐ is paid herewith

\$ 300.00

6. Petition fee (35 U.S.C. § 41(a)(7) and 37 C.F.R. § 1.17(m))

NOTE: The fee for the petition to revive an application unintentionally abandoned is \$1,210. 35 U.S.C. § 41(a)(7) and 37 C.F.R. § 1.17(m).

Application status is:

☒ Small business entity—fee

\$750.00

☐ A statement is enclosed.

☒ A statement has been filed.

☐ Other than small entity—fee

\$1,500.00

Fee \$ \$750.00

Total issue and petition fee to be paid \$ \$750.00

7. Payment of total fee:

☐ Attached is a ☐ check ☐ money order in the amount of \$ _____

☒ Authorization is hereby made to charge the amount of \$ \$750.00

☒ to Deposit Account No. 01-0428

☐ to Credit card as shown on the attached credit card information authorization form PTO-2038.

WARNING: Credit card information should **not** be included on this form as it may become public.

☒ Charge any additional fees required by this paper or credit any overpayment in the manner authorized above.

A duplicate of this paper is attached.

8. Showing Required When Petition Being Filed is More Than 3 Months From Notification of Abandonment or More Than 1 Year After Abandonment

NOTE: The applicant must carry the burden of proof to establish that the "entire" delay, from the due date for the fee and the filing of a grantable petition, was unintentional regardless of the circumstances that originally resulted in the abandonment of the application. M.P.E.P., § 711.03(c), 8th Ed., Rev. 2.

(complete the following, if applicable)

☐ Because this petition is more than 3 months after the date the Office first notified the applicant that the application is abandoned, applicant additionally submits a showing as to how the delay between the date the applicant was first notified that the application is abandoned and the filing of this petition under 37 C.F.R. § 1.134(b) was unintentional. 62 Fed. Reg. 53,131, 53,159 (Oct. 10, 1997). See M.P.E.P., § 711.03(c), 8th Edition, Rev. 2.

☐ Because this petition is more than 1 year after the date of abandonment of the application, applicant additionally submits further information as to when applicant (or applicant's representative) first became aware of the abandonment of the application, and a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant (or applicant's representative). 62 Fed. Reg. 53,131, 53,159 (Oct. 10, 1997). See M.P.E.P., § 711.03(c), 8th Ed., Rev. 2.

(Petition to Accept Delayed Payment of Issue Fee—Failure to Pay Unintentional [11-5]—page 3 of 4)

9. Terminal Disclaimer

NOTE: 37 CFR 1.37(c) requires that a petition under 37 CFR 1.137(b) be accompanied by a terminal disclaimer (and fee), disclaiming a period equivalent to that period of abandonment, regardless of the period of abandonment, in: (1) a design application; (2) a nonprovisional utility application filed before June, 1995; or (3) a nonprovisional plant application filed before June 8, 1995. Any terminal disclaimer pursuant to § 1.137(c) must also apply to any patent granted on any continuing application that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the application for which revival is sought. The provisions of § 1.137(c) do not apply to lapsed patents or to applications for which revival is sought solely for purposes of copendency with a utility or plant application filed on or after June 8, 1995 or to reexamination proceedings.

- A. ☒ This utility/plant application was filed on or after June 8, 1995 and no terminal disclaimer is required.

OR

- B. ☐ This application is:

- ☐ a design application
☐ a nonprovisional utility application filed before June 8, 1995
☐ a nonprovisional plant application filed before June 8, 1995
and a terminal disclaimer, and the fee therefor, is attached.

Date:

9/15/05

Carole Ann Mulchinski

Signature of person making statement
that abandonment was unintentional

Carole Ann Mulchinski

(type or print name of person making statement)

4931 West 122 Street

Residence of person making statement

Hawthorne, California 90250

Reg. No.: 32,096

Tel. No.: (310) 336-6709

Customer No.: 000043499

Derrick Michael Reid

SIGNATURE OF PRACTITIONER

Derrick Michael Reid

(type or print name of practitioner)

The Aerospace Corporation

P.O. Box 92957, M1/040

P.O. Address

Los Angeles, CA 90009